

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Abigail Shuster	Team: Squad #15	CCRB Case #: 201507072	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 08/20/2015 1:30 AM	Location of Incident: St. Ann's Avenue between East 156th and 157th Streets	Precinct: 40	18 Mo. SOL 2/20/2017	EO SOL 2/20/2017	
Date/Time CV Reported Fri, 08/21/2015 3:27 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Fri, 08/21/2015 3:27 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Felix Baez	04759	953654	PSA 7
2. POM Nicholas Rios	06583	955377	PSA 7
3. POM John Zorrilla	22991	933511	PSA 7
4. SGT Miguel Frias	1309	930184	PSA 7

Officer(s)	Allegation	Investigator Recommendation
A.SGT Miguel Frias	Abuse: Sgt. Miguel Frias stopped the vehicle in which § 87(2)(b) was an occupant.	
B.POM Nicholas Rios	Abuse: PO Nicholas Rios threatened § 87(2)(b) with the use of force.	
C.POM John Zorrilla	Discourtesy: PO John Zorrilla spoke discourteously to § 87(2)(b)	
D.POM Nicholas Rios	Abuse: PO Nicholas Rios frisked § 87(2)(b)	
E.POM Nicholas Rios	Abuse: PO Nicholas Rios searched § 87(2)(b)	
F.POM John Zorrilla	Abuse: PO John Zorrilla interfered with § 87(2)(b)'s ability to record officers.	
G.SGT Miguel Frias	Force: Sgt. Miguel Frias used physical force against § 87(2)(b)	
H.POM Felix Baez	Discourtesy: PO Felix Baez spoke discourteously to § 87(2)(b)	

### Case Summary

§ 87(2)(b) filed this complaint with the CCRB via the online website on August 21, 2015, regarding an incident that had occurred the day prior.

On August 20, 2015, at approximately 1:30am, § 87(2)(b) was driving on St. Ann's Avenue between East 156<sup>th</sup> and East 157<sup>th</sup> Streets in the Bronx when he was stopped by Sgt. Miguel Frias from PSA 7, who was accompanied by PO Nicholas Rios, PO Felix Baez, and PO John Zorrilla (**Allegation A**). PO Rios then told § 87(2)(b) to step out of the car, and when § 87(2)(b) asked why, PO Rios allegedly replied, "Either you get out of the car or I'll drag you out of the fucking car!" (**Allegation B**). Upon exiting, PO Zorrilla allegedly told § 87(2)(b) "We don't need your fucking consent" (**Allegation C**). PO Rios then frisked and allegedly searched § 87(2)(b) (**Allegation D** and **Allegation E**).

PO Zorrilla took possession of § 87(2)(b)'s cell phone and allegedly stopped it from recording (**Allegation F**). During handcuffing, Sgt. Frias allegedly bent § 87(2)(b)'s right arm upward into a painful position, causing injury (**Allegation G**). PO Baez allegedly told § 87(2)(b) "We don't get a fuck about your aunt," when § 87(2)(b) stated that his aunt would corroborate his whereabouts (**Allegation H**). At the stationhouse, § 87(2)(b) was summonsed for disorderly conduct for obstructing vehicular traffic.

### Mediation, Criminal and Civil Histories

- § 87(2)(b) rejected mediation during both his telephone statement and his sworn statement, stating that he intended to sue the officers and did not believe in mediation.
- Because § 87(2)(b) was issued a summons at the stationhouse and no arrest report was generated, a New York State Office of Court Administration search could not be performed. An E-Courts search, performed on November 18, 2015, did not yield any information regarding a summons issued to § 87(2)(b).
- A FOIL request was made on November 23, 2015, to verify whether any notices of claim were filed in regard to this incident. The results will be added to the case file upon receipt.

### Civilian and Officer CCRB Histories

- § 87(2)(b) [REDACTED]
- Sgt. Frias, during his 13 year tenure with the NYPD, has been the subject of 10 prior CCRB allegations involving 4 cases. All but one of these allegations have been under the Abuse of Authority category, and of these, four were substantiated. § 87(2)(g) [REDACTED]
- This is PO Baez's first CCRB complaint during his two year tenure with the NYPD.
- This is PO Rios's first CCRB complaint during his two year tenure with the NYPD.
- During PO Zorrilla's twelve year tenure with the NYPD, he has been the subject of 9 prior CCRB allegations, none of which were substantiated. § 87(2)(g) [REDACTED]

## **Findings and Recommendations**

### **Allegation Not Pled**

- Abuse of Authority - Vehicle search: § 87(2)(b) alleged that two officers searched the front seats of his vehicle after § 87(2)(b) was handcuffed and being placed in the police vehicle for transport. Because it is undisputed this search was conducted after § 87(2)(b) had already been taken into police custody, and prior to an officer driving § 87(2)(b)'s vehicle to the stationhouse, this limited search of § 87(2)(b)'s vehicle was performed as per arrest protocol. Because it was not alleged to have been performed as pursuant to any other reasons or suspicions, the vehicle search allegation is not being pled.

### **Explanation of Subject Officer Identification**

Firstly, none of the officers took responsibility for the decision to execute the vehicle stop. The officers could not recall who remarked aloud about their observations of § 87(2)(b)'s vehicle, though they all acknowledged having independently made those observations. Because Sgt. Frias was the supervisor in the vehicle, Allegation A is pled against him.

Secondly, § 87(2)(b) identified PO Rios and PO Baez as the two primary officers with whom he interacted during the vehicle stop. He obtained their names from an uninvolved officer at the stationhouse as well as off of his summons. Specifically, he reported that PO Baez was the driver of the police vehicle and was the first officer to approach his window. He reported that this officer was the subject of his threat of force, frisk, and force allegations. By all of the officers' accounts, however, it was PO Rios who approached § 87(2)(b)'s window at the start of the interaction; PO Rios also acknowledged being the officer to frisk § 87(2)(b) and participate in handcuffing him. Allegations B, D, and E are therefore pled against PO Rios and not PO Baez. Similarly, Allegation H (which § 87(2)(b) made against PO Rios), is pled against PO Baez.

Secondly, though § 87(2)(b) believed that it was PO Baez who used force against his right arm while the officers stood behind him, Sgt. Frias acknowledged being the officer to restrain § 87(2)(b)'s right arm. Allegation G is therefore pled against Sgt. Frias.

Thirdly, § 87(2)(b) alleged that PO Rios (whom, as discussed, he confused with PO Baez) was the officer to take possession of § 87(2)(b)'s cell phone. Because PO Zorrilla acknowledged being in possession of § 87(2)(b)'s cell phone, Allegation F is pled against PO Zorrilla.

### **Recommendations**

#### **Allegation A – Abuse of Authority – Sgt. Frias stopped the vehicle in which § 87(2)(b) was an occupant.**

It is undisputed that a police vehicle containing Sgt. Frias, PO Rios, PO Baez, and PO Zorrilla, pulled § 87(2)(b)'s vehicle over on St. Ann's Avenue and East 156<sup>th</sup> Street in the Bronx. It is also undisputed that these officers had observed § 87(2)(b) for several minutes immediately prior to pulling him over, at which time § 87(2)(b) had been parked in front of a residential building located at 520 East 156<sup>th</sup> Street in the Bronx. § 87(2)(g)

§ 87(2)(b) testified that he parked at the curb in front of his cousin's house, located at 520 East 156<sup>th</sup> Street, after having dropped his cousin off. He waited there for 15 to 20 minutes while his aunt heated up some leftover food for him. During these minutes, he observed an unmarked police vehicle driving toward him in the opposite lane, which slowed down but did not stop, then passed him. After his cousin returned to the car and gave him the plate of food, § 87(2)(b) drove toward St. Ann's Avenue, where he was pulled over by the same unmarked police vehicle he had observed minutes prior (BR 2).

§ 87(2)(b) testified that PO Rios informed him that he was being stopped for his rear vehicle lights being out and he requested § 87(2)(b)'s license and registration, which § 87(2)(b) immediately provided. § 87(2)(b) told PO Rios that his lights were in working order, at which point PO Rios began questioning him about where he was coming from and told him, "You were in front of that building for too long," and that he "didn't believe his story," about waiting for the plate of food (BR 2).

PO Baez, PO Zorrilla, Sgt. Frias, and PO Rios consistently described the manner in which § 87(2)(b)'s double-parked vehicle created a traffic obstruction. Because he was double-parked on a two-way, bidirectional street, the officers all testified that they observed multiple eastbound vehicles drive into the oncoming lane of traffic in order to circumvent § 87(2)(b)'s vehicle. The officers all estimated that they observed § 87(2)(b)'s vehicle in this position for 5-10 minutes, during which time the driver was merely sitting in his seat (BR 3 – BR 6).

All four officers also testified to having witnessed an unidentified individual approach § 87(2)(b)'s passenger side window and deposit an item through that window. PO Baez and Sgt. Frias were unable to describe the item deposited, while PO Rios described it as a rectangular-shaped and iPhone-sized object wrapped in a white plastic bag. PO Zorrilla testified that the individual had placed his hands inside of § 87(2)(b)'s vehicle, but that the individual did not appear to have been holding anything prior to doing so. All four of the officers uniformly testified that the building in front of which § 87(2)(b) parked is a known drug location and that there had also been a recent shooting in the area (BR 3 – BR 6).

The officers indicated that there was some conversation in their vehicle about what they had observed. PO Rios stated that the officers discussed the area as drug-prone and the object being passed, and when asked if conversation also occurred regarding § 87(2)(b)'s double-parking, PO Rios stated, "We did mention that, yes, as the reason why we would stop him." Sgt. Frias similarly stated that the conversation amongst officers included their intention to pull him over and summons him for an idling violation, as well as because "we were going to investigate what was going on with what we observed." The investigator clarified, "With the individual throwing the item into the car?" to which Sgt. Frias replied, "Yes" (BR 3 – BR 6).

Although PO Rios summonsed § 87(2)(b) at the stationhouse for the violation that he and the other officer testified to observing (BR 7), § 87(2)(b) stated that the officers told him he was being stopped for a broken tail light. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

**Allegation B – Abuse of Authority – PO Nicholas Rios threatened § 87(2)(b) with the use of force.**

**Allegation C – Discourtesy – PO John Zorrilla spoke discourteously to § 87(2)(b)**

**Allegation H – Discourtesy – PO Felix Baez spoke discourteously to § 87(2)(b)**

§ 87(2)(b) alleged that, after he inquired as to why he was being asked to step out of the vehicle, PO Rios replied, “Either you get out of the car or I’ll drag you out of the fucking car!” Upon exiting, § 87(2)(b) told the officer preemptively that he did not consent any searches and PO Zorrilla allegedly replied, “We don’t need your fucking consent.” § 87(2)(b) also alleged that, after telling the officers that his aunt would corroborate his story about waiting for the leftover food, PO Baez told him, “We don’t give a fuck about your aunt” (BR 2).

PO Rios denied having made the above statement or any other threats of force to § 87(2)(b) Sgt. Frias, PO Baez, and PO Zorrilla all testified that they did not hear PO Rios make this statement to § 87(2)(b) nor did any of them make it (BR 3 – BR 6).

PO Zorrilla denied having told § 87(2)(b) “We don’t need your fucking consent.” Sgt. Frias, PO Rios, and PO Baez, all testified that they did not hear any officer make this statement toward § 87(2)(b). Similarly, PO Baez denied having told § 87(2)(b) “We don’t give a fuck about your aunt,” as did the rest of the officers testify that they did not hear PO Baez or any officer make this statement to § 87(2)(b) (BR 3 – BR 6).

§ 87(2)(b), § 87(2)(g)

**Allegation D – Abuse of Authority – PO Nicholas Rios frisked § 87(2)(b)**

**Allegation E – Abuse of Authority – PO Nicholas Rios searched § 87(2)(b)**

Because § 87(2)(b) reported being frisked prior to being handcuffed and PO Rios acknowledged frisking him at such time, § 87(2)(g)

§ 87(2)(b) reported that after providing his documentation, PO Rios instructed him to step out of the vehicle. § 87(2)(b) alleged that PO Rios patted his front right pants pocket after he exited from the vehicle. § 87(2)(b) moved back slightly and said, “For what? You’re not searching me – what did I do wrong?” PO Rios then turned § 87(2)(b) around, pushed him against the rear driver’s side door, at which point one or more officers searched § 87(2)(b)’s pockets, checked his waistband area, searched inside the ankle areas of his pants, and removed his hat (BR 2).

PO Rios testified that, in response to his second request for § 87(2)(b)’s documentation, § 87(2)(b) asked, “Why?” in a combative tone of voice. PO Rios acknowledged that, at this point in the stop, § 87(2)(b) had not been informed as to the reason he was pulled over. PO Rios instructed § 87(2)(b)

§ 87(2)(b) to step out of the vehicle and § 87(2)(b) did so while using profanity and yelling at the officers, calling them “faggots.” Two minutes elapsed between the beginning of the vehicle stop and § 87(2)(b) being asked to exit his vehicle. PO Rios testified that, immediately after § 87(2)(b) exited the vehicle, PO Rios frisked his waistband area while § 87(2)(b) stood facing his vehicle. He explained that he frisked § 87(2)(b) because he suspected him of being in possession of a firearm or other weapon, suspicions which arose due to § 87(2)(b)'s combative tone and the criminal history of the building in front of which § 87(2)(b) had been double-parked. He stated that he also performed this frisk as incident to arrest, as § 87(2)(b) had refused to provide identification and was therefore under arrest instead of being summonsed on scene. PO Rios denied searching § 87(2)(b) at this time, stating that he searched his pockets only after § 87(2)(b) was handcuffed (BR 4).

PO Baez testified that, from his position on the passenger side, he observed PO Rios frisk § 87(2)(b)'s waistband area immediately after he stepped out of the vehicle. He did not see any officer search § 87(2)(b). Sgt. Frias, from his position on the driver's side along PO Rios, testified that he did not recall whether any officer frisked § 87(2)(b) prior to handcuffing him, and stated that he frisked § 87(2)(b) himself as incident to arrest after placing him in handcuffs. Sgt. Frias denied searching § 87(2)(b) at any point or seeing any officer do so. PO Zorrilla testified that he did not recall whether § 87(2)(b) was frisked and he did not see any officer search § 87(2)(b)'s pockets (BR 3, BR 5, BR 6).

Video footage, provided by § 87(2)(b) and recorded on his cell phone during the incident, captures the moments surrounding the frisk. § 87(2)(b) can be heard asking, “Why y’all searching me?” to which PO Baez replies, “This isn’t a search, brother, relax, alright?” (BR 8, BR 9).



2015-11-22\_15-08-08.mp4

A frisk requires reasonable suspicion that an individual is armed. People v. DeBour, 40 N.Y. 2d. 210 (1976) (BR 10). Behavior that occurs in a high-crime area does not justify a greater level of intrusion than would be warranted by that same behavior in other areas. People v. Cornelius, 113 A.D. 2d 666 (1986) (BR 13).

§ 87(2)(b), § 87(2)(g)  
[REDACTED]

§ 87(2)(b), § 87(2)(g)  
[REDACTED]

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

**Allegation F – Abuse of Authority – PO John Zorrilla interfered with § 87(2)(b)'s ability to record officers.**

It is undisputed that PO Zorrilla took possession of § 87(2)(b)'s cell phone during the incident and moved it to another location. § 87(2)(g)

§ 87(2)(b) reported that he pressed the record button on his cell phone just as he stepped out of the vehicle. He placed his cell phone on the roof of his vehicle and placed his hands on the roof, as instructed by the officers. While PO Rios was frisking him, § 87(2)(b) adjusted the cell phone upward using his left hand, such that the camera might catch the officers' faces. Shortly thereafter, PO Zorrilla removed § 87(2)(b)'s cell phone from the roof of the car and allegedly pressed one of the buttons which caused it to stop recording (BR 2).

PO Zorrilla acknowledged taking possession of § 87(2)(b)'s cell phone, stating that he removed it directly from § 87(2)(b)'s left hand because it was not safe for § 87(2)(b) to be holding an object during a police encounter. He did not know what the object was until he had taken hold of it, at which time he realized it was a phone. PO Zorrilla moved it directly to the windshield area, where it remained until he picked it up again at the conclusion of the incident when it was time for him to drive § 87(2)(b)'s vehicle to the stationhouse. He denied having specific knowledge that § 87(2)(b) was recording the incident and denied pressing any buttons on § 87(2)(b)'s phone. He did recall § 87(2)(b) saying something about his phone, but he did not recall what that statement was (BR 6).

PO Rios testified to observing PO Zorrilla removing a cell phone from § 87(2)(b)'s hand, but stated that he did not see PO Zorrilla press any buttons on it. Sgt. Frias saw something in § 87(2)(b)'s hand but never saw any officer in possession of such an object, and did not see any officer pressing buttons on § 87(2)(b)'s phone. He did not recall whether § 87(2)(b) ever told the officers that he was recording the incident, but Sgt. Frias noted that he assumed § 87(2)(b) was since most

people record incidents. PO Baez did not observe any officer pressing buttons or holding § 87(2)(b)'s phone during the incident (BR 4, BR 5).



2015-11-22\_15-46-17.mp4

The video footage taken on § 87(2)(b)'s cell phone corroborates § 87(2)(b)'s account of his own interaction with the phone. His left arm is seen reaching in the direction of the camera, at which time the frame tilts upward, consistent with § 87(2)(b)'s stated aim at capturing the officers' faces. A metal-on-metal clunking sound is heard and the video then goes completely dark, consistent with the sound and appearance of a camera being positioned face-down on the roof of the vehicle. The conversation that follows between § 87(2)(b) and the officers sounds to be considerably further away from the recording device than was previous conversation. PO Rios stated that none of the individuals walked away from § 87(2)(b)'s vehicle while this occurred, and he did not know why the recorded voices are abruptly so distant. Were § 87(2)(b) still holding the phone at this time, his own voice would have been close to the camera and would have been recorded at a similar volume to his prior statements. Instead, his inquiry as to what precinct the officers were from (at 0:10-0:12 on the above video clip) is extremely distant sounding, consistent with his statement that PO Zorrilla was in possession of § 87(2)(b)'s phone at the time (BR 8, BR 9).

§ 87(2)(b), § 87(2)(g)

It is lawful for civilians to videotape police incidents. NYPD Patrol Guide Procedure 208-03. (BR 11).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)



**Allegation G – Force – Sgt. Miguel Frias used physical force against § 87(2)(b)**

It is undisputed that some physical force was used to handcuff § 87(2)(b) § 87(2)(g)

§ 87(2)(b) testified that multiple officers stood behind him as he faced his vehicle, at which time Sgt. Frias twisted his right arm back and upward and held it there for close to eight minutes. This maneuver caused pain as well as a crack or pop sound. He testified that he was not receiving any commands and that his left hand was still positioned on the roof of the car until he was eventually handcuffed. He stated that there was no struggle to get him into the handcuffs (BR 2).

Sgt. Frias testified that, after pushing § 87(2)(b) chest-first against his vehicle, he instructed him to place his hands behind his back. § 87(2)(b) instead bent his right arm forward, toward his chest. Aside from this movement, § 87(2)(b) did not do anything with his right arm. Sgt. Frias stated that he used the minimum amount of force necessary to secure § 87(2)(b)'s right arm behind his back. When asked whether he twisted § 87(2)(b)'s arm upward into a painful or uncomfortable position in doing so, Sgt. Frias simply reiterated that he had used the minimum force necessary. He did not hear a crack or pop noise. He stated that § 87(2)(b) was successfully handcuffed, with assistance from PO Rios on the § 87(2)(b)'s left side, within seconds (BR 5).

PO Rios, PO Zorrilla, and PO Baez all testified that they did not hear a crack or popping noise during § 87(2)(b)'s apprehension. PO Baez did not recall whether § 87(2)(b)'s arm was forced upward into a painful position. PO Zorrilla testified that he did not observe the manner in which § 87(2)(b) was handcuffed at all. PO Rios corroborated Sgt. Frias's account that force was used to bring § 87(2)(b)'s right arm behind his back, which took about ten seconds (BR 3, BR 4, BR 6).

§ 87(2)(b) sought medical attention from § 87(2)(b) in the Bronx on August 20, 2015, about an hour after he was released from police custody. He was diagnosed with right upper extremity pain and limited range of motion and tenderness in his right arm. He stated that his injury resulted from being handcuffed that day. An x-ray revealed that his arm was not fractured (see medical records).

Officers are to use the minimum force necessary. NYPD Patrol Guide 203-11 (BR 12).

§ 87(2)(b), § 87(2)(g)

---

Squad: 15

Investigator: \_\_\_\_\_  
Signature                      Print                      Date

Pod Leader: \_\_\_\_\_  
Title/Signature                      Print                      Date

Attorney: \_\_\_\_\_  
Title/Signature                      Print                      Date